***THE HON'BLE SRI JUSTICE BILAL NAZKI**

AND

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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+WRIT PETITIONS NO. 2316, 2309 & 2323 OF 2004

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% 03-09-2004

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Between:

Oil & Natural Gas Corpn. Ltd., Rajahmundry Asset, Godavari Bhavan, Base Complex, Rajahmundry, East Godavari Dist., Rep. by its Manager (MM).

..... PETITIONER

(In all the Writ Petitions)

AND

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1 Government of Andhra Pradesh, Revenue(CT-II) Department, Rep. by its

Principal Secretary, Secretariat, Hyderabad.

2 Commissioner of Commercial Taxes, Govt. of Andhra Pradesh, Hyderabad.

3 Asst. Commissioner of Commercial Taxes, Large Tax Payers Unit, Kakinada, East Godavari District.

.....RESPONDENTS

(In all the Writ Petitions)

For the Petitioners in all the Writ Petitions : MR.Kakaravenkata Rao, Advocate.

For the Respondents in all the Writ Petitions : GP for Commercial Taxes.

< Gist:

> Head Note:

? CITATIONS:

1. AIR 1967 SC 1454.
2. (1972) 2 SCC 620.
3. (1976) 2 SCC 241.
4. 2004(1) DT (NRC) (SC) 119.

C/15

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

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PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

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WRIT PETITIONS No. 2316, 2309 & 2323 OF 2004

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WRIT PETITION NO : 2316 of 2004

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Between:

Oil & Natural Gas Corpn. Ltd., Rajahmundry Asset, Godavari Bhavan, Base Complex, Rajahmundry, East Godavari Dist., Rep. by its Manager (MM).

..... PETITIONER

AND

-

1 Government of Andhra Pradesh, Revenue(CT-II) Department, Rep. by its

Principal Secretary, Secretariat, Hyderabad.
2 Commissioner of Commercial Taxes, Govt. of Andhra Pradesh, Hyderabad.
3 Asst. Commissioner of Commercial Taxes, Large Tax Payers Unit, Kakinada, East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari calling for the records relating to the order in proceedings Rc. KDA.10/03/1161(02-03)(ET) dated 09.01.2004 and consequential demand notice (Form No. D2) Rc. KDA.10/03/1161(02-03) dated 09.01.2004 passed by Asst. Commissioner of Commercial Taxes, Large tax payers unit, Kakinada, the 3rd respondent and quash the same.

WRIT PETITION NO : 2309 of 2004

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Between:

Oil & Natural Gas Corporation Ltd. Rajahmundry Asset, Godavari Bhavan, Base Complex, Rajahmundry, East Godavari District rep.by its Manager (MM)

..... PETITIONER

AND

-

1 Government of Andhra Pradesh, Revenue (CT-II) Department, rep.by its

Principal Secretary, Secretariat, Hyderabad.
2 Commissioner of Commercial Taxes, Govt.of Andhra Pradesh, Hyderabad.
3 Asst.Commissioner of Commercial Taxes, Large Tax Payers Unit,
Kakinada, East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari calling for the records relating to the order in Proceedings RC.KDA.10/03/1161(03-04)(ET) dated 09-01-2004 and consequential demand notice (Form No.D2) RC.KDA.10/03/1161(03-04) dated 09-01-2004 passed by Asst.Commissioner of Commercial Taxes, Large Tax Payers unit, Kakinada, the 3rd respondent and quash the same.

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WRIT PETITION NO : 2323 of 2004

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Between:

Oil & Natural Gas Corpn. Ltd., Rajahmundry Asset, Godavari Bhavan, Base Complex, Rajahmundry, East Godavari District., rep by Manager (MM)

..... PETITIONER

AND

-

1 Government of Andhra Pradesh Revenue (CT-II) rep by its Principal

Secretary, Secretariat, Hyderabad
2 Commissioner of Commercial Taxes, Government of Andhra Pradesh

Hyderabad
3 Asst. Commissioner of Commercial Taxes Large Tax Payers Unit, Kakinada, East Godavari District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari calling for the records relating to the order in proceedings RC.KDA.10/03/1161(01-02)(ET) dt 09-01-2004 and consequential demand notice (Form No. D2) Rc. KDA. 10/03/1161(01-02) dt 09-01-2004 passed by Asst. Commissioner of Commercial Taxes, Large Tax payers unit Kakinada, the 3rd respondent and quash the same and direct the respondents to refund Rs. 15,38, 235/- illegally collected from the petitioner.

Counsel for the Petitioners in all the Writ Petitions : MR.KAKARAVENKATA RAO.

Counsel for the Respondents in all the Writ Petitions : Special GP FOR COMMERCIAL TAXES.

The Court made the following :

COMMON ORDER : (Per Sri Bilal Nazki,J)

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The main question to be resolved in these Writ Petitions is, whether the Oil Well Cement class 'G' (HSR type) is Cement so as to attract liability of tax under the Andhra Pradesh Tax on Entry of Goods into Local Area Act, 2001 (hereinafter referred to as 'the Act'). Facts are taken from W.P.No.2316 of 2004.

WRIT PETITION No. 2316 OF 2004

The contention of the petitioner is that the petitioner-Corporation operates in Krishna-Godavari basin in East, West and Krishna Districts of Andhra Pradesh. It is a Central Government Company engaged in exploration and production of oil and natural gas. For the purpose of drilling oil wells, different types of Mud Chemicals are required to be used and one of the chemicals used is called 'Oil Well Cement Class 'G' (HSR type)'. Though the word 'cement' is used as part of the name of this chemical, it has no connection or similarity whatsoever with the ordinary cement, which is used in constructions. The Oil Well Cement is not useful to anybody, except for the Companies like O.N.G.C., involved in drilling of oil wells. The petitioners are importing this from Tamilnadu from a manufacturer.

It is contended that in terms of Section 3 of the Act, tax can be levied on entry of the notified goods into any local area of Andhra Pradesh, for sale or consumption. The goods notified on 3rd of May, 2001 were – (1) High Speed Diesel Oil (2) L.D.O. (3) Furnace Oil (4) Cement. The rate of tax for cement was 16%. In the year 2002, by G.O.Ms.No.552, dated 12.9.2002 published on 23.9.2002, Oil Well Cement had been notified and tax was levied at 4%. Since Oil Well Cement was notified for the first time by G.O.Ms.No.552, it is contended that prior to that date i.e. 23.9.2002, no tax was payable on import of Oil Well Cement. But the Commercial Tax Officer, Rajahmundry passed a provisional assessment order, dated 12.4.2002, assessing the petitioner under the provisions of the Act and levied tax at 16% on the value of 600 Metric tonnes of Oil Well Cement imported by petitioner from June, 2001 to January, 2002 and demanded from the petitioner Rs.30,76,467/- towards the tax. Aggrieved of that order, petitioner filed an appeal and during pendency of the appeal, G.O.Ms.No.552, dated 12.9.2002 was issued and in view of this notification, the appellate Deputy Commissioner, on 24.12.2002, disposed of the appeal filed by the petitioner, by setting aside the provisional assessment order passed by the Commercial Tax Officer, Rajahmundry, holding that Oil Well Cement was liable to tax at 4% with effect from notification in G.O.Ms.No.552, dated 12.9.2002. He remanded the matter back to the assessing authority to make final assessment in terms of G.O.Ms.No.552, dated 12.9.2002. Appeal was filed before the Tribunal, which is pending. In the meantime, it appears that the respondent No.3 passed final orders in pursuance of the order of remand and the petitioners have approached this Court by way of Writ Petition against the order of 3rd respondent, dated 09.01.2004 and consequential notice, dated 20.11.2003, proposing to assess and levy entry tax on the Oil Well Cement Class ‘G’ (HSR type) imported by the petitioner during the year 2002-2003 @ 16% on a quantity of 3405.85 Metric Tonnes imported from 30.04.2001 to 11.09.2002 and @ 4% from 12.09.2002 to 31.03.2003 and has called upon the petitioner to file written statement of objections against the proposed assessment and levy.

Petitioner submitted his objections on 24.12.2003. However, the respondent No.3 passed impugned order, levying tax of Rs.21,38,860/- on the Oil Well Cement imported by the petitioner from 30.04.2001 to 11.09.2002 and calculated the same @ 16%. He also imposed Rs.48,784/- @ 4% from 12.09.2002 to 31.03.2003.

The learned Senior Counsel had, during the arguments, confined his attack only to the tax levied at 16% for the period from 30.04.2001 to 11.09.2002. The Oil Well Cement class 'G' (HSR type) during that period, according to him, was not exigible to tax.

Now, in order to appreciate the argument of the learned Senior Counsel, provisions of Section 3 of the Act will have to be gone into as it is the charging Section. It reads as under :

> ***"3. Levy and Collection of Tax** :- (1) (a) There shall be levied and collected a tax on the entry of the notified goods in to any local area for sale, consumption or use therein. The goods and the rates at which, the same shall be subjected to tax shall be notified by the Government. The tax shall be on the value of the goods as defined in clause (n) of sub-section (1) of Section 2 and different rates may be prescribed for different goods or different classes of goods or different categories of persons in the local area.*
>
> *(b) The tax shall be payable by the importer in such manner and within such time as may be prescribed.*
>
> *(c) The rate of tax to be notified by the Government in respect of any commodity shall not exceed the rate specified for that commodity under the Andhra Pradesh General Sales Tax Act, 1957 (Act VI of 1957) or the Notifications issued thereunder.*
>
> *Provided that the tax payable by the importer under this Act shall be reduced by the amount of tax paid, if any, under the law relating to General Sales Tax in force in the Union Territory or State, in which the goods are purchased."*

Sub-section (1) of Section 3 makes it clear that the goods and rates at which the same shall be subject to tax, shall be notified by the Government, which would otherwise mean that if a good was not notified in terms of Section 3, that could not be taxed. So, the argument goes that cement was included in G.O.Ms.No.308, issued on 03.05.2001, but the good in which the petitioner was dealing namely Oil Well Cement class 'G' (HSR type) would not fall under the category of cement.

Learned Counsel for respondents however, contended that cement would include all forms of cement and all types of cements carry 16% of tax on import into the territory of Andhra Pradesh.

The learned Counsel for petitioner submits that the Government subsequently passed G.O.Ms.No.552 on 12.09.2002, categorizing Oil Well Cement class 'G' (HSR type) as a different commodity would itself show that the Oil Well Cement was not essentially cement as understood in common parlance. He further submits that the requirements for ordinary Portland cement even for manufacture, are different than the Oil Well Cement. He also contends that the usage of Oil Well Cement is altogether different than the usage of ordinary Portland cement. Whereas ordinary Portland cement can be used for constructions of buildings and houses, it cannot be used for drilling operations as burning material at high temperature ranging from 85 Deg.Centigrade to 115 Deg.Centigrade. The Oil Well Cement is used under the working pressure of 7500 PSI to 15000 PSI, mixing with other chemicals, which is at all not conceivable as far as ordinary Portland cement is concerned. The Learned Counsel has placed on record the statement showing the difference between the Oil Well Cement and ordinary Portland cement as differentiated by I.S.I. This statement is reproduced :

Sl.No.	Description	Unit	RequirementFor Oil Well Cement	Requirement for Ordinary Portland cement
1	Specifications		As per API (American Petroleum Institute) Specifications 10 A.	As per IS: 269/1987 and amended time to time.

2	Usage		In Drilling operations as bonding material at High temperature ranging from 85 Deg. C to 115 Deg. C and working pressure 7500 psi to 15000 psi mixing with other Mud chemicals	In Construction of Building, Houses etc.,
3	Chemical Composition			
	i) Sulphur Trioxide	%	3.00 Maximum	Sulphuric Anhydride 2.5% maximum
	ii) Loss in Ignition	%	3.00 Maximum	4.0% maximum
	iii)Insoluble Residue	%	0.75% maximum	4.0% maximum
	iv)Magnesium Oxide	%	6.00 Maximum	Magnesia 6.0% maximum
	v)Tricalcium silicate	%	48.00 min65.00 max	--
	vi)Tetra Calcium Aluminoferrite+twice the tricalcium aluminate	%	24.00 max	--
4	Physical Properties:			
	i)Free water content	%	5.90 max	--

	ii)Compression strength 8 hrs. curing time at atmos.Pressure anda)52 Deg. Centrigrade Pressure 5160 PSI raised in 28 minutes (Sec.No.5 API Spec. 10)b)Max. consistency at 15030 minutes string.	Minute Bc	90 minimum120 maximum 20 Maxm	Compressive strength: Units Requirement 3 days MPa 27Max7 days Mpa 37 Max28 days Mpa 53 Max
5	Specific surface	M2/kg	--	225 min.
6	Soundness			
	i)Le-chatlier expansion	Mm	--	10 max.
	ii)Autoclave expansion	%	--	0.8 maximum
7	L.S.F.		--	0.80-1.02
8	A.M		--	0.66 min.
9	Chlorides (Cl-)	%	--	0.10 max.
10	Sp.Test procedures, Test equipments		As per API Sp. 10A.	As per IS: 269/1987.
11	Buyers in A.P.		ONGC only for drilling operations.	All the individuals/ contracts who are constructing buildings/house etc.,

The statement shows the difference between two cements in their composition and usage. However, the learned Counsel for respondents submits that the difference in usage and composition would not matter in cases of interpretations to a particular entry for the purpose of charging of tax at a particular rate. He refers to the following judgments;

1. *The Commissioner of Sales Tax, Madhya Pradesh, Indore Vs.*

M/s.Jaswant Singh Charan Singh. In Para 6, Supreme Court held;

> *"The result emerging from these decisions is that while construing the word 'coal' in Entry I of Part III of Sch. II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute is being one levying a tax on goods must in the absence of a technical term or in term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance. Viewed from that angle both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include 'charcoal' in the term 'coal'. It is only when the question of the kind or variety of coal would arise that a distinction would be made between coal and charcoal; otherwise, both of them would in ordinary parlance as also in their commercial sense be spoken as coal."*

2) *Minerals and Metals Trading Corporation of India Ltd., Vs. Union of India & others.* In Para 9, the Supreme Court held;

> *"Apart from all this it must be remembered that in interpreting items in Taxing Statutes resort should be had not to the scientific or technical meaning but to the meaning attached to them by those dealing in them in their commercial sense."*

3) *Dunlop India Ltd., Vs. Union of India and others.* Supreme Court held;

> *"It is well established that in interpretin themeaning of words in a taxing statute, the acceptation of a particular word by the trade and its popular meaning should commend itself to the authority."*

The learned Counsel for petitioner however submits that all these judgments were considered recently by Supreme Court in a similar case reported in *Associated Cement Company Limited Vs. State of Madhya Pradesh and others*. The controversy in this case was, whether refractory cement was cement so as to attract liability of export tax. After considering the composition and the uses of

refractory cement, the Court came to the conclusion that refractory cement was different than ordinary Portland cement, but having noted the judgments referred to above and also having noted the law laid down by Lord Esher in *Unwin vs. Hanson (1891) 2 QB 115,* it concluded by saying, *"Therefore it has to be understood in the same way as it understood in common parlance."* The paragraph it quoted from Esher Bench is reproduced below;

> *"If the Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business, or transaction and words are used which everybody conversant with that trade, business or transaction knows and understands to have a particular meaning in it then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words. We would only add that there should be material to enter appropriate finding in the case. The material may be either oral or documentary evidence."*

The Supreme Court further said ;

> *"Cement is exclusively used as a building material and is a commodity of everyday use. Therefore, we have to go only by the popular or commercial meaning of the term. The main property of the refractory is that it can withstand very high temperature, corrosion and abrasion. Cement is used for building roads, bridges and dams etc. and also by common people for building residential or commercial buildings. Anyone buying cement for building purpose would under no circumstance use refractory in making a normal construction. The refractory is used for entirely different purpose namely for furnaces, linings and for insulation. A dealer would not supply refractory to anyone wanting to buy cement. In Cemento Corporation Ltd. Vs. Collector of Central Excise [2002 (8) SCC 139] it has been held that it is axiomatic that if the product is not cement but can be used for some purposes like cement, such product is not cement. We are, therefore, of the opinion that refractory material produced by the appellant does not fall within the Entry 'all types of cement' and consequently it is not exigible to levy of export tax."*

Following the principles laid down by the judgment of the Supreme Court, as we have seen from the statement furnished to us and also

from the correspondence between the petitioners and the respondents, we have no doubt in our mind that the Oil Well Cement class 'G' (HSR type) is understood as a different commodity than ordinary Portland cement in common usage and parlance. In order to substantiate this finding further, some of the correspondence in this connection may have to be referred to. One of the communications placed before us along with the reply affidavit filed by the petitioner, is a communication written by Sri N.Ramesh Kumar, IAS, Commissioner of Commercial Taxes, Andhra Pradesh, to the Principal Secretary to the Government. It appears that a representation had been made before him against levy of tax @ 4% after G.O.Ms.No.552 had been issued. While forwarding the representation to the Government, the Commissioner had stated ;

> *"It is true that this special category of cement is exclusively purchased by only ONGC. There is no manufacturer of this cement in A.P. The original intention is to levy Entry Tax only in respect of cement, ordinarily used in the construction activity. It was not intended to tax this special type of cement used in offshore Oil Rigs. In view of the assistance rendered by ONGC for developing various bridges in the State and this being special category of cement with an exclusive use, I am to request the Government to kindly exempt Oil Well Cement Class 'G' (HSR type) from the levy of Entry Tax under the A.P. Tax on Entry of Goods into Local Areas Act, 2001 with retrospective effect from September, 2001."*

The paragraph from the communication is only reproduced to come to a conclusion that Oil Well Cement is altogether a different commodity than the ordinary Portland cement and this type of cement in Andhra Pradesh, is not produced at all and this type of cement is only used by the petitioners in Andhra Pradesh whereas it is common knowledge that the ordinary cement is used by almost everybody, therefore Oil Well Cement could not be understood to be included in Entry relating to the cement.

For the reasons given hereinabove, we allow Writ Petition No.2316 of 2004 and hold that the petitioner was not exigible to Entry Tax in terms

of Andhra Pradesh Tax on Entry of Goods into Local Area Act, 2001 from 30.04.2001 to 11.09.2002, but is however exigible to tax @ 4% subsequent to 12.09.2002 when Oil Well Cement was specifically included in the notification issued under Section 3 of the Act.

WRIT PETITION No. 2323 of 2004

This Writ Petition pertains to period from 02.05.2001 to 31.03.2002. This petition is also allowed in view of the orders in W.P.No.2316 of 2004.

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WRIT PETITION No. 2309 of 2004

No orders are needed to be passed in this Writ Petition, as it has not been pressed by the learned Senior Counsel, and accordingly it is dismissed.

In the result, Writ Petitions No.2316 & 2323 of 2004 are allowed and Writ Petition No.2309 of 2004 is dismissed. No costs.

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(BILAL NAZKI, J)

Dt: 03-09-2004.

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(P.S.NARAYANA,J)

N.B:-

L.R.Copies to be marked.

(B/o)

ajr

N.B.:-

Office shall place the copies of this order in respective

Bundles after the signatures of their Lordships.

One Fair Copy to the Honourable Justice Bilal Nazki (For his Lordships perusal).

One Fair Copy to the Honourable Justice P.S.Narayana (For his Lordships perusal).

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To:

1 The Principal Secretary to Government of Andhra Pradesh, Revenue(CT-II)

Department, Secretariat, Hyderabad.

2 The Commissioner of Commercial Taxes, Govt. of Andhra Pradesh,

Hyderabad.

3 The Asst. Commissioner of Commercial Taxes, Large Tax Payers Unit, Kakinada, East Godavari District.

4 Two C.Cs. to the G.P. For Commercial Taxes, High Court buildings,

Hyderabad (O.U.T.)

5 8 L.R. Copies.

6 The under Secretary, Union of India, Ministry of Law, Justice and Company

affairs, New Delhi.

7 The Secretary, A.P.Advocates Association Library, High Court buildings,

Hyderabad.

8 Two C.D. Copies.